



Brian Schweitzer
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender
Randi Hood

MEMORANDUM

EXHIBIT 5

TO: Pat Gervais, Legislative Fiscal Division

FROM: Harry Freebourn, OPD

CC: Randi M. Hood, Chief Public Defender
Brent Doig, Office of Budget and Program Planning

DATE: November 9, 2006

RE: Response to Your Email Dated 11/01/06 – Knowledge of FY 2006 Deficit

This memorandum responds to your email to me dated November 1, 2006 requesting the following information:

"Just wanted to follow-up on a LFC request from July when they met to discuss the OPD supplemental. At that time the LFC requested information on the sequence of events related to the supplemental request - when it was known that the plan to pay for FY 2006 expenditures in FY 2007 was not ok, etc. I don't recall receiving this information, would you please forward it to me?"

SEQUENCE OF EVENTS

April 21, 2006: The Office of the State Public Defender (OPD) became aware that it might not be able to live within its FY 2006 appropriation when the Montana Public Defender Commission made adjustments to and then approved the Office of the State Public Defender Strategic Plan – Dated April 21, 2006. This plan was prepared to outline how OPD intended to provide public defender services in Montana as per the requirements of Title 47, MCA. The fiscal part of this plan stated that FY 2006 expenditures were expected to be at least \$66,087 above OPD's appropriation for that year. The adjustments to the plan included hiring eleven Regional Deputy Public Defenders and having them start before July 1, 2006, and having certain offices readied for operation on July 1 rather than sometime after July 1 to ensure a smooth transition as the state assumed public defender services from county/city management.

April, May and June 2006: OPD staff stated during the April, May, and June Montana Public Defender Commission meetings that in order to fully execute the provisions of

the approved strategic plan, they expected expenditures to be above the FY 2006 and FY 2007 appropriations for the agency. At those meetings, OPD staff indicated that the plan developed to cover the shortfall for FY 2006 was twofold: (1) request funding from the Governor's personal services contingency for increased payroll costs; and (2) have the Department of Administration's Information Technology Services Department (ITSD) purchase and install certain communication and computing equipment but not bill OPD for the activity until FY 2007. OPD staff developed this plan with staff members from the Department of Administration, ITSD, and the Office of Budget and Program Planning. OPD is administratively attached to the Department of Administration and was assisted heavily by this agency during OPD's start-up phase.

May and June 2006: During this period OPD learned about the need to purchase two telephone systems, personal computers, and various other communication related equipment. Gallatin County notified us of their plan to replace their telephone system at the end of June 2006, and asked us to purchase our own system for the public defender operation since it would no longer be a county function. OPD elected to move out of the Missoula County facility effective July 1, 2006 and needed to install a telephone system in the new location to be ready for operation on July 1. OPD also needed to have personal computers ready for use by new personnel as they came on board July 1. This required that the computers be purchased and configured in June.

May 31, 2006: OPD informed the Legislative Audit Division (LAD) of its plan to cover the FY 2006 shortfall.

July 14, 2006: OPD learned that its request for funding from the Governor's personal services contingency fund was approved.

July 19, 2006: OPD learned that the plan to have ITSD delay billing would not be workable.

July 21, 2006: Legislative Finance Committee (LFC) meeting via conference call.

As I stated during the LFC meeting on July 21, 2006, a biennial appropriation for a start up activity like OPD would have prevented this situation. If you need any other information, please call me (406-496-6084).